

Serial No.: 09/933,054

Art Unit: 3634

Attorney Docket No.: 1999P14011WOUS

REMARKS

Reconsideration of the application is requested.

Applicant appreciatively acknowledges the Examiner's confirmation of receipt of applicant's claim for priority under 35 U.S.C. § 119(a)-(d).

Claims 1 to 6, 8, and 12 to 25 remain in the application.

**Section 103 Rejection over Pasqualini in view of Kordes**

On pages 2 to 3 of the above-identified final Office Action, the Examiner rejected Claims 1, 12 to 14, 20 to 22, 24, and 25 under 35 U.S.C. § 103 as being obvious over U.S. Patent No. 4,617,759 to Pasqualini et al. (hereinafter "Pasqualini") in view of U.S. Patent No. 4,053,972 to Kordes.

As will be explained hereinafter, Applicants believe that the claims were patentable over the cited art in their original form and, therefore, the claims have not been amended to overcome the references.

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Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful. Claims 1, 15, 16 and 21 each call for, *inter alia*:

an outer paneling having a free edge portion, the outer paneling being made from a metallic material; and

an inner paneling having an edge portion, the inner paneling being made from metallic material.

Each of these independent claims also address a thermally insulating couple as follows:

Claim 1 provides, *inter alia*, a thermally insulating couple being a fastening element of a door seal and connecting the edge portion to the free edge portion, the couple substantially thermally uncoupling the edge portion from the free edge portion.

Claim 15 provides, *inter alia*, a means for thermally insulatingly coupling the edge portion to the free edge portion, the coupling means substantially thermally uncoupling the edge portion from the free edge portion.

Claim 16 provides, *inter alia*, a thermally insulating couple connecting the edge portion to the free edge portion, the couple substantially thermally uncoupling the edge portion from the free edge portion.

Claim 21 provides, *inter alia*, a thermally insulating couple connecting the edge portion to the free edge portion, the couple substantially thermally uncoupling the edge portion from the free edge portion and the thermally insulating couple being constructed for directly holding the seal foot of the door seal.

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The reason why a thermally insulating couple is significant in the independent claims of the instant application is because both the inner panel and the outer panel are made of metal. If one panel was plastic and the other panel was metal, the issue of a thermally insulating couple therebetween would be irrelevant. Accordingly, any reference that addresses a door having a metal outer panel and a plastic inner panel would not even speak to the issue of a thermally insulating couple.

For example, as clearly shown in Pasqualini, a refrigerator door is disclosed only having a steel sheet outer door 16 and a plastic counterdoor 17. See col. 1, lines 16 to 22 and 50 to 53, and col. 3, lines 6 to 19. Pasqualini does not suggest, let alone disclose, alternative materials for the door sheet or the counterdoor 17 and, especially does not mention a thermal insulating couple or replacing the plastic counterdoor 17 with metal. In fact, the Examiner admits: "Pasqualini et al. does not teach a refrigerator door having both the inner and outer panels made of metal." Final Office action at page 2, first paragraph.

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Therefore, there can be no argument that Pasqualini's teaching fails to implicitly or explicitly provide a person of ordinary skill in the art with any motivation for using different materials for either the steel door shell or the plastic counterdoor. Most definitely, Pasqualini does not provide a person of ordinary skill in the art any motivation to substitute the plastic counterdoor with a counterdoor made of metal.

In order to make up for this deficiency, the Examiner combines Pasqualini with Kordes because the Examiner believes that Kordes teaches a refrigerator door having both the inner and outer panels made of metal. Thus, the Examiner concludes that it would be obvious to "modify the inner panel of Pasqualini et al. to be a metal material instead of . . . plastic."

It is well settled that almost all claimed inventions are but novel combinations of old features. The courts have held in this context, however, that when "it is necessary to select elements of various teachings in order to form the claimed invention, we ascertain whether there is any suggestion or motivation **in the prior art** to make the selection made by the

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applicant". Interconnect Planning Corp. v. Feil, 227 USPQ 543, 551 (Fed. Cir. 1985) (emphasis added). "Obviousness can not be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination". In re Bond, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990). "Under Section 103 teachings of references can be combined **only** if there is some suggestion or incentive to do so." ACS Hospital Systems, Inc. v. Montefiore Hospital et al., 221 USPQ 929, 933, 732 F.2d 1572 (Fed. Cir. 1984) (emphasis original). "Although a reference need not expressly teach that the disclosure contained therein should be combined with another, the showing of combinability, in whatever form, must nevertheless be '**clear and particular.**'" Winner Int'l Royalty Corp. v. Wang, 53 USPQ2d 1580, 1587, 202 F.3d 1340 (Fed. Cir. 2000) (emphasis added; citations omitted); Brown & Williamson Tobacco Corp. v. Philip Morris, Inc., 56 USPQ2d 1456, 1459 (Fed. Cir. Oct. 17, 2000). Applicants believe that there is no "clear and particular" teaching or suggestion in Pasqualini to incorporate the features of Kordes, and there is no teaching or suggestion in Kordes to incorporate the features of Pasqualini.

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In establishing a *prima facie* case of obviousness, it is incumbent upon the Examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion, or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the applicants' disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir. 1988), *cert. den.*, 488 U.S. 825 (1988). The Examiner has not provided the requisite reason why one of ordinary skill in the art would have been led to modify Pasqualini or Kordes or to combine Pasqualini's and Kordes' teachings to arrive at the claimed refrigerator door invention. Further, the Examiner has not shown the requisite motivation from some teaching, suggestion, or inference in Pasqualini or Kordes or from knowledge available to those skilled in the art.

It is significant that the Examiner failed to give any support for the proposition why one having ordinary skill in

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the art would make such a drastic change to the Pasqualini device. In fact, the Examiner admits that no support was given for such a conclusion. Specifically, in the paragraph appearing at the top of page 5 of the final Office action, the Examiner's sole reason for permitting a substitution of materials in Pasqualini was "reasoned from knowledge generally available to one of ordinary skill in the art." The Examiner provided no treatise, article, journal, or other publication for this conclusion. Simply put, the only rationale for motivating such a change is "it is obvious."

If such a change were so obvious, then why would there be no support in the relevant art? The answer to this question is simple. Having both the inner and outer panel be metallic was not a configuration that was prominent or taught by those having ordinary skill in the art. Kordes, itself, provides sufficient support for this conclusion. The only place that Kordes mentions both inner and outer metal panels appears in lines 17 to 20 of column 1. This text occurs not inside the Description of the Preferred Embodiments section. Instead, it appears only in the Background of the Invention section. It is there for a specific reason -- to indicate why prior art configurations are disadvantageous and should be avoided. In

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particular, Kordes, in col. 1, lines 21 to 25, describes that a two-metal panel configuration has "a very serious drawback." Thus, any argument that Kordes supports using two metal panels instead of one metal and one plastic cannot be supported.

In columns 1 and 2, Kordes indicates many reasons why two different materials for the inner and outer panels are preferred and why two metal panels are not preferred. Kordes specifically points out that a bridging strip is required when the two panels are made of metal. This bridging strip is not only a separate undesirable element, it also needs to "be welded to the edges of the drum [inner panel] and the face [outer panel]." Accordingly, with a bridging strip, the high-cost procedure of welding around a periphery is required. It would be advantageous, therefore, to avoid the need of a bridging strip and, thereby, not incur the cost of expensive welding. Kordes also explains that thermally induced relative movement causes cracking in parts when they are fixed to one another as in metal panels with a bridging strip. See Kordes at col. 1, lines 25 to 33. Kordes further mentions the disadvantages of gaskets being fixed to doors. See col. 1, line 52, to col. 2, line 6. In lines 34 to 42, Kordes gives



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several examples of patents that solve the problem of fixedly connected parts like welded metal panels.

The most significant problem associated with two panels made of metal lies in the fabrication of the panels and the interposed insulating material. Kordes explicitly addresses the difficult manufacturing process of keeping the front and rear panels separated from one another in col. 2, lines 26 to 30 as follows:

Suffice it to say that maintaining the door components in the desired position solely by means of the fixture holding the door during the foaming operation would be extremely difficult if not impossible from a practical point of view.

Simply put, manufacturing two panels at a constant and fixed distance is very hard without having fixtures disposed in between the two panels separating the panels from one another. Such fixtures would create a very undesirable heat bridge that insulated doors are designed to avoid. As Kordes states in col. 2, lines 7 to 19, the prior art at the time of the reference permanently cured the gasket into the door, thus, possibly, resulting in misalignment of the gasket during the

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curing process and entirely preventing removal at a later time.

Pasqualini describes the benefits of having a plastic inner panel and a metal outer panel. If the light, plastic inner panel was removed and replaced by a substantially heavier, metal inner panel, then the ability to align the two panels during manufacturing would be even more costly and difficult. What is obvious is that Pasqualini cannot be said to teach towards replacing the plastic inner panel with a panel that would increase manufacturing difficulty and cost.

The actual invention disclosed by Kordes pertains to refrigerator doors having an outer metal panel and an inner plastic panel member. Kordes also mentions similar refrigerator doors and each of these have a metal outer panel and an inner plastic panel. See U.S. Patent No. 3,078,003 to Kesling at col. 2, lines 58 to 64, and U.S. Patent No. 3,359,053 to Hagendoorn at col. 2, lines 28 to 32.

The Pasqualini device has a metal door shell and a plastic counterdoor. Therefore, Pasqualini does not need to thermally uncouple the door shell and the counterdoor. Kordes

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is completely silent about the issue of thermally uncoupling two panels made from metallic material. Therefore, a person of ordinary skill in the art is not motivated by Pasqualini in view of Kordes to equip a refrigerator door having an outer and an inner paneling both made from metallic material with a thermally uncoupling couple connecting the two panels.

Because Kordes pertains mainly to refrigerator doors having a metal outer paneling and a plastic inner paneling and Pasqualini only discloses a refrigerator door with a metal outer paneling and a plastic inner paneling, a person of ordinary skill in the art cannot be motivated by the teaching of Kordes to substantially modify the only refrigerator door disclosed in Pasqualini to replace the inner plastic panel with a panel are made of metal.

Applicants respectfully believe that any teaching, suggestion, or incentive possibly derived from the prior art is only present with hindsight judgment in view of the instant application. "It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps. . . . The references **themselves** must provide some teaching whereby the applicant's

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combination would have been obvious." In re Gorman, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991) (emphasis added). Here, no such teaching is present in the cited references.

For all of these reasons, Pasqualini and Kordes do not show or suggest an outer paneling having a free edge portion and being made from a metallic material, an inner paneling having an edge portion and being made from metallic material, as recited in claims 1 and 21 of the instant application.

Due to the fact that claims 12-14, 20, 22, 24, and 25 are ultimately dependent upon claims 1 or 21, and insofar as claims 1 and 21 are believed to be allowable, these dependent claims are believed to be allowable as well.

#### **Section 103 Rejection over Kordes in View of Kiel**

In the first full paragraph on page 3 of the Office action, claims 1 to 6, 8, and 12 to 25 have been rejected as being obvious over Kordes in view of U.S. Patent No. 5,193,310 to Kiel under 35 U.S.C. § 103.

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In making the rejection of these claims, the Examiner first concludes: "Kordes further discloses that it is well known in the art to provide a refrigerator door with a metal inner panel. As set forth in detail above, this conclusion is unsupportable. Thus, all of the argumentation set forth above is hereby incorporated herein by reference in its entirety.

The Examiner admits on page 3 of the final Office action: "Kordes is silent concerning a plastic thermal insulating couple." Accordingly, Kordes cannot be said to suggest or teach having such an insulating couple.

To make up for the deficiency of Kordes, the Examiner combines Kiel with Kordes by stating: "Kiel teaches a plastic thermal insulating couple (18) substantially connecting between an offset free edge portion of the outer panel (12) and the edge portion of the inner panel (14)." To establish the Examiner's *prima facie* burden for motivating such a combination, the Examiner merely states:

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to substitute the plastic inner panel of Kordes with a metal panel as taught by

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column 1, line 18, to increase the rigidity of the door.

However, as clearly set forth above, Kordes does not even suggest, let alone expressly teach, entirely replacing a plastic inner panel with a metal panel. Kordes also does not teach increasing the rigidity of the door as suggested by the Examiner. In fact, Kordes teaches that one should NOT so replace a plastic panel with a metal panel (1) because welding would have to occur (with its associated additional cost), (2) because fixed connections between panels are highly undesirable and are prone to cracking and breaking, and (3) because undesirable heat-transferring supports would have to be present to align the panels during manufacture. Therefore, it would NOT be obvious to change the Kordes plastic panel for a metal panel.

The Examiner also states that "it would have been obvious to one of ordinary skill in the art to replace the thermal insulating couple of Kordes with a thermal coupling, as taught by Keil, in order to have a thermal coupling that has a magnet seal to seal between the door and cabinet of the refrigerator." However, no support, justification, rationale, or reason is given to make such a conclusion. In fact, it is

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the Examiner who provides the support for Applicants' conclusion that support for the Examiner's conclusion is non-existent. In the paragraph appearing on page 6 of the final Office action, the Examiner states: "Even if Kordes and Kiel are silent about the connectors for connecting the inner and outer panels providing a thermal barrier" - which applicants agree they are - "the plastic construction of Kiel **inherently** provides a thermal barrier . . . ." Thus, the Examiner is merely relying on inherency and nothing more to support this rejection.

A critical step in analyzing the patentability of claims pursuant to 35 U.S.C. § 103 is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. See In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614,1617 (Fed. Cir. 1999). Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher." Id. (quoting

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W.L. Gore & Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540,  
1553, 220 USPQ 303, 313 (Fed. Cir. 1983)).

Most if not all inventions arise from a combination of old elements. See In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ2d 1453,1457 (Fed. Cir. 1998). Thus, every element of a claimed invention may often be found in the prior art. See id. However, **identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention.** See id. Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the appellant. See In re Dance, 160 F.3d 1339, 1343, 48 USPQ2d 163.5, 1637 (Fed. Cir. 1998); In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125,1127 (Fed. Cir. 1984).

The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved. See In re Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617. In addition, the teaching, motivation



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or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. See WMS Gaming, Inc. v. International Game Tech., 184 F.3d 1339, 1355, 51 USPQ2d 1385, 1397 (Fed. Cir. 1999). The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. See In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981) (and cases cited therein). **Whether the examiner relies on an express or an implicit showing, the examiner must provide particular findings related thereto.** See In re Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617. **Broad conclusory statements standing alone are not "evidence."** Id. When an examiner relies on general knowledge to negate patentability, **that knowledge must be articulated and placed on the record.** See In re Lee, 277 F-3d 1338, 1342-45, 61 USPQ2d 1430, 1433-35 (Fed. Cir. 2002).

No such support has been placed on the record by the Examiner.

Kiel merely discloses a refrigerator door having an outer paneling and an inner paneling, where the outer paneling is a

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metal outer shell and the inner paneling is an injection molded plastic pan. See col. 1, lines 13 to 25, and col. 2, lines 20 to 30. Because Kiel explicitly discloses that a refrigerator door is constructed out of a metal outer shell and an injected molded plastic pan (inner panel), and because Kordes pertains mainly to refrigerator doors having a metal outer paneling and a plastic inner paneling, there can be no conclusion that a person of ordinary skill in the art would be motivated to modify the Kordes refrigerator door in any way and, especially, would not be motivated by Keil to change the Kordes inner plastic panel to panel made of metal. In fact, Kordes teaches the opposite.

It is noted that the couple connecting the metal outer shell 12 and the inner plastic liner pan 14 of the Keil refrigerator door **does not need to thermally uncouple** the two elements because of its configuration. Because Keil does not address thermal uncoupling, it cannot be said to suggest thermally uncoupling the panels of Kordes. Moreover, Kordes is completely silent about the issue of thermally uncoupling two panels made from a metallic material. Therefore, a person of ordinary skill in the art cannot be motivated by Kordes in view of Kiel to equip a refrigerator door having an outer and

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an inner paneling both made from metallic material with a couple connecting the two panels wherein the couple thermally uncouples the panels as set forth in claims 1, 15, 16, and 21 of the instant application.

Kordes discloses that there exists a "serious drawback" of welding, screwing, or bolting two panels together due to the relative movement between the inner and outer surfaces of the door. Kordes addresses this mentioned drawback by introducing the Kordes retainer that allows relative movement between the inner and outer surfaces of the door. Not surprisingly, Kordes is absolutely silent about thermal coupling or uncoupling of two panels of a refrigerator, and is especially silent with regard to two panels are made from metallic material. Consequently, contrary to the present invention, Kordes does not and cannot suggest a refrigerator door having two panels made from metallic material, wherein a couple connects both panels and wherein the couple thermally insulates the panels from each other. Instead, Kordes teaches away from the use of metal inner and outer panels.

Upon evaluation of the examiner's comments, it is respectfully believed that the evidence adduced by the

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examiner is insufficient to establish a prima facie case of obviousness with respect to all of the claims. Accordingly, the rejection must be withdrawn.

Applicants respectfully believe that any teaching, suggestion, or incentive possibly derived from the prior art is only present with hindsight judgment in view of the instant application. "It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps. . . . The references **themselves** must provide some teaching whereby the applicant's combination would have been obvious." In re Gorman, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991) (emphasis added). Here, no such teaching is present in either Kordes or Kiel.

Based upon the above, Kordes in view of Kiel does not show or suggest the features of claims 1, 15, 16, or 21 of the instant application. Because claims 1, 15, 16, and 21 are believed to be allowable over Kordes in view of Kiel, dependent claims 2 to 6, 8, 12 to 14, 17 to 20, and 22 to 25 are believed to be allowable as well due to their dependency upon the independent claims.

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The following remarks pertain to both of the Section 103 rejections and, therefore, are set forth together.

The Kordes reference was filed in 1977. The Pasqualini reference was filed in 1983 and still did not consider providing a refrigerator door with an outer and inner paneling both made out of metal. Even nine years after Pasqualini when Kiel was filed, a refrigerator door with an inner and outer paneling both made out of metal was not practiced in the art - a conclusion that is made clear from Kiel's statements that a refrigerator door is constructed out of a metal outer shell and an injection molded plastic pan. See Kiel at col. 1, lines 14 to 25. In other words, even though it was theoretically known in the art in 1977 to use metal for the inner and outer panels, it still was not practiced in the art fourteen years after Kordes. Therefore, a person of ordinary skill in the art still would only contemplate improvements on refrigerator doors having an outer paneling made out of metal and an inner paneling made of plastic. Improvements on refrigerator doors having a metal inner liner and a metal outer liner are still not common.

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Because the teaching of Kordes is primarily concerned with refrigerator doors having a metal outer paneling and a plastic inner paneling and improvements on refrigerator doors having metal inner and metal outer panels are not practiced in the art, there is no motivation for a person of ordinary skill in the art to use an insulating couple for connecting the edge portions of a metal inner paneling with the edges of a metal outer paneling, as is recited in the instant application, based on the combination of Pasqualini and Kordes or based on the combination of Kordes and Kiel.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claims 1, 15, 16, and 21. Claims 1, 15, 16, and 21 are, therefore, believed to be patentable over the art and since all of the dependent claims are ultimately dependent on claims 1, 16, or 21 they are believed to be patentable as well.

In view of the foregoing, reconsideration and allowance of claims 1 to 6, 8, and 12 to 25 are solicited.

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Petition for extension is herewith made. The extension fee for response within a period of three (3) months pursuant to Section 1.136(a) in the amount of \$1020.00 in accordance with Section 1.17 is enclosed herewith.

If the Examiner has any questions or further objections regarding the claims, the Examiner is requested to contact the undersigned.

Russell W. Warnock

Name of Attorney Signing

Under 37 CFR 1.34

Respectfully submitted



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